IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17865 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHHIKABHAI VALLABHBHAI TANDEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 17865 of 2003

MR SUNIL C PATEL for Petitioner No. 1

RULE SERVED for Respondent No. 1

MS P B SHETH AGP for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 08/04/2004

ORAL JUDGEMENT

The petitioner above named has preferred this petition under Article 226 of the Constitution of India

for appropriate writ, order or direction, for quashing and setting aside an order of detention dated 29/10/03 passed by respondent no.2 herein, in exercise of the powers u/s.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, "the said Act").

2. It was alleged against the petitioner that three prohibition offences were registered against him before Navsari Prohibition Police Station at C.R.No.1174 / 2003, 1175 / 2003 and 1677 / 2003 on 22/06/03, 23/06/03 and 04/09/03 respectively for offences punishable u/s.66, 65, 81 and 116 of the Bombay Prohibition Act, 1949.

3. It was also alleged against the petitioner that two witnesses had given statements against the petitioner saying that he was engaged in bootlegging activities. On the strength of the aforesaid three registered offences and two statements of unnamed witnesses, the detaining authority found that the petitioner is required to be detained, with a view to prevent him from indulging in bootlegging activities, which amounted to a threat to public order and accordingly, the order of detention was passed against the petitioner.

4. Feeling aggrieved by the said order of his detention, the petitioner has preferred this petition before this Court. It has been contended here that on a mere fact that three offences was registered, it could not be said that there was a threat to public order or public health. It has also been contended that names of the witnesses were not disclosed to the petitioner, and therefore, there was a violation of the principle of natural justice. That, therefore, the order of detention is illegal and hence, it may be quashed and set aside.

5. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.P B Sheth learned AGP has appeared on behalf of the respondents. I have heard the learned advocates for the parties and have perused the papers.

6. The learned advocate for the petitioner has contended that the order of detention against the petitioner is not in accordance with law, since the registration of three offences under the Bombay Prohibition Act, 1949, would not lead to a threat to public order or public health.

6.1 On this aspect of the case, the learned AGP has relied upon a decision of the Hon'ble the Apex Court in the case of Kanuji Jhala V/s.

State of Gujarat reported in 2000 (4) GLR 3256 wherein it has been observed that mere registration of some offences under the Bombay Prohibition Act, 1949, would lead to a threat to public health.

6.2 This decision was again considered by this Court (Coram : Hon'ble Mr.Justice N.G.Nandi) in S.C.A.No.16542 / 2003 dated 26/02/04. While considering the said decision of the Hon'ble the Supreme Court, the learned Judge of this Court has clearly observed that before observing that the registration of prohibition offences would lead to a threat to public order or public health, the detaining authority must have before it credible material for so observing.

6.3 On considering the facts of the said matter and the facts of the case of hand, it is found that even before the detaining authority in the present matter, there appears to be no further material in observing that the registration of prohibition offences would lead to a threat to public order or public health.

6.4 Even a Division Bench of this Court has considered the above aspect and has observed that in absence of any credible material, the detaining authority should not detain the petitioner.

7. Following the principle laid down in the aforesaid decision, I am of the view that in the present case also, on registration of a few prohibition offences, it cannot be said that there was credible material before the detaining authority for coming to a conclusion that the activities of the petitioner would amount to a threat to public order or public health. Therefore, the order of detention has to fall on the aforesaid consideration.

8. The detaining authority has also considered statements of two witnesses whose names have not been disclosed. The learned advocate for the petitioner has argued that the names of the witnesses were required to be disclosed and when the names were not disclosed, the petitioner was unaware about those names and hence, the petitioner could not submit an effective representation to the detaining authority or to the State Government.

10. The learned AGP contends that u/s.9(2) of the

said Act, the detaining authority has a power of privilege to withhold the names of the witnesses from the notice of the petitioner. There is no dispute about the same. This aspect has been considered by this Court (Coram : Hon'ble Mr.Justice A.L.Dave) in S.C.A.No.11335 / 2001, wherein it has been observed in clear terms that before claiming power of privilege u/s.9(2) of the said Act, the detaining authority must make an inquiry into the matter, in order to ascertain the genuineness and correctness of the statements made by the witnesses. At the same time, it is required to be considered that such a representation is required to be considered on appropriate material. Before a right or power of privilege is claimed u/s.9(2) of the said Act, the detaining authority has to ascertain by appropriate inquiry that there is a genuine fear or apprehension in the minds of the witnesses on account of which they apprehend fear and therefore, their names were required to be kept away from the notice of the petitioner. In the present case, we find that the records do not show that there was credible material before the detaining authority in order to withhold the names of the witnesses from the notice of the petitioner. In absence of such material on record, it cannot be said that the detaining authority was justified in withholding the names of those witnesses.

11. So, on the one hand, with respect to the registered offences, it could not be said that the illegal activities of the petitioner would lead to a threat to public order, and on the other hand, the statements of witnesses were not considered and their names were not disclosed to the petitioner which would amount to a violation of the principle of natural justice. Therefore, on these counts, the order of detention is required to be quashed and set aside.

12. For the foregoing reason, this petition is allowed. The impugned order of detention dated 29/10/03 passed by respondent no.2 against the petitioner, is ordered to be quashed and set aside. Detenu, Chikhabhai Vallabhbhai Tandel, is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(D. P. Buch, J.)

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